

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KENDYL WELCH,  
Plaintiff,  
  
v.  
  
MOLLY O'NEAL,  
Defendant.

Case No. [15-cv-0725-TEH](#)

ORDER OF DISMISSAL WITH LEAVE  
TO AMEND

Plaintiff, a civil detainee, proceeds with a civil rights action under 42 U.S.C. § 1983. He is civilly committed pursuant to California's Sexually Violent Predators Act (SVPA). See Cal. Welf. & Inst. Code 6600, et seq. Plaintiff is committed in Coalinga, CA which is located in the Eastern District of California. The underlying commitment proceeding appears to have originated in Santa Clara County, which is in this district.<sup>1</sup> Plaintiff's original complaint was dismissed with to leave amend and he has filed a first amended complaint that is more than 800 pages.

Plaintiff states that he was subject to faulty mental health assessments that were used as evidence to determine that he should be subject to civil commitment. He alleges that the

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<sup>1</sup> Plaintiff filed a previous case where he stated that the commitment proceeding originated in San Francisco County. Welch v. Allenby, No C-14-5223 TEH (PR).

1 California Department of State Hospitals conducted the  
2 assessments. The sole defendant in this case is the supervising  
3 deputy of the Santa Clara County Public Defender's Office, who  
4 Plaintiff alleges supervised the assigned deputy public defender.  
5 Plaintiff states that Defendant should have been aware that  
6 Plaintiff's assigned public defender was providing ineffective  
7 assistance of counsel which resulted in Plaintiff receiving the  
8 faulty mental health assessments.

9 Plaintiff alleges that the faulty health assessments prevent  
10 outpatient treatment in violation of his Constitutional rights.  
11 For relief, Plaintiff seeks protection from future faulty mental  
12 health assessments.

13 I

14 Federal courts must engage in a preliminary screening of  
15 cases in which prisoners seek redress from a governmental entity  
16 or officer or employee of a governmental entity. 28 U.S.C. §  
17 1915A(a). The court must identify cognizable claims or dismiss  
18 the complaint, or any portion of the complaint, if the complaint  
19 "is frivolous, malicious, or fails to state a claim upon which  
20 relief may be granted," or "seeks monetary relief from a  
21 defendant who is immune from such relief." Id. § 1915A(b).  
22 Pleadings filed by pro se litigants, however, must be liberally  
23 construed. Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010);  
24 Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir.  
25 1990).

26 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
27 allege two essential elements: (1) that a right secured by the  
28 Constitution or laws of the United States was violated, and (2)

1 that the alleged violation was committed by a person acting under  
2 the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

3 II

4 Plaintiff was informed in the prior screening order that to  
5 the extent that he sought relief regarding his treatment, his §  
6 1983 action must be brought in the Eastern District of  
7 California, where plaintiff is civilly committed at Coalinga  
8 State Hospital. See 28 U.S.C. §§ 84(b), 1391(b). The Court  
9 noted that Plaintiff's previous case, Welch v. Allenby, No C-14-  
10 5223 TEH (PR), also challenged the validity of the health  
11 assessments and named as Defendants officials at the California  
12 Department of State Hospitals and Coalinga State Hospital. That  
13 case was transferred to the Eastern District of California. To  
14 the extent Plaintiff sought to again challenge the health  
15 assessments this case would be dismissed as duplicative.

16 Plaintiff was also informed in the prior order that to the  
17 extent Plaintiff sought to challenge his underlying commitment or  
18 sought relief that would entitle him to immediate or earlier  
19 release from his civil commitment, he must file a petition for a  
20 writ of habeas corpus under 28 U.S.C. § 2254 after exhausting  
21 state judicial remedies. See Skinner v. Switzer, 131 S. Ct.  
22 1289, 1293 (2011); see also Nelson v. Sandritter, 351 F.2d 284,  
23 285 (9th Cir. 1965) (constitutionality of state civil commitment  
24 proceedings may be challenged in federal habeas corpus after  
25 state judicial remedies have been exhausted).

26 To the extent Plaintiff sought injunctive relief against  
27 Defendant Molly O'Neal, the county public defender; his complaint  
28 was dismissed with leave to amend. Plaintiff presented general

1 allegations that Defendant should have known that the health  
2 assessments were faulty and irrational, but provided no specific  
3 details. Plaintiff was also informed that he needed to clarify  
4 the relief that he sought. He sought relief from future  
5 assessments but did not discuss the circumstances that would lead  
6 to another assessment. It was not clear if Plaintiff has already  
7 been committed, was still awaiting the final commitment hearing,  
8 or if he has been committed indefinitely.

9 In this amended complaint, Plaintiff emphasizes that he is  
10 not seeking speedier relief from confinement. He states that he  
11 seeks better individualized treatment and for better assessments  
12 to be used to determine his treatment. Motion to Amend at 1. To  
13 the extent that Plaintiff is again challenging the treatment by  
14 the Department of State Hospitals he has already brought that  
15 action in his previous case and that claim is dismissed from this  
16 action.

17 Plaintiff states that public defender's office failed to  
18 adequately train attorneys and did not properly investigate  
19 Department of State Hospital staff members. His main argument is  
20 that the public defender's office did not successfully  
21 demonstrate that the assessments were inadequate, that were used  
22 to detain him and others similarly situated detainees. Plaintiff  
23 seeks to present this claim pursuant to Miranda v. Clark County,  
24 Nevada, 319 F.3d 465, 468-70 (9th Cir. 2003) (head of a county  
25 public defender's office, as the administrative head of an  
26 organization formed to represent criminal defendants, may be held  
27 accountable under § 1983 for a policy that leads to a denial of  
28 an individual's right to effective representation of counsel).

1 In Miranda, the plaintiff complained of a policy of administering  
2 lie detector test to all defendants and allocating minimal  
3 resources for preparation of defense to those clients who appear  
4 guilty because they failed the polygraph, and of a policy to  
5 assign the least-experienced lawyers on staff to capital cases  
6 without training or experience in the special demands of such  
7 cases. Id.

8 In his amended complaint, Plaintiff has again failed to  
9 specifically describe how the public defender's policy led to a  
10 violation of his rights. Plaintiff's central argument is with  
11 the Department of State Hospitals regarding the assessment  
12 procedures and he has already filed that case. He appears to  
13 argue that the public defender's office is not properly  
14 challenging these assessments. However, Plaintiff provides no  
15 specific arguments on how the office or how they handle cases is  
16 inadequate. His conclusory statements that the public defender's  
17 office needs to set forth policies to ensure Constitutional  
18 rights are protected are insufficient to state a claim. "A claim  
19 has facial plausibility when the plaintiff pleads factual content  
20 that allows the court to draw the reasonable inference that the  
21 defendant is liable for the misconduct alleged." Ashcroft v.  
22 Iqbal, 556 U.S. 662, 678 (2009). The amended complaint is  
23 dismissed with leave to amend to address these deficiencies and  
24 describe how the specific policies are inadequate or specifically  
25 how the training is improper.

26 Plaintiff's amended complaint was more than 800 pages.  
27 Federal Rule of Civil Procedure 8(a)(2) requires only "a short  
28 and plain statement of the claim showing that the pleader is

entitled to relief." While the Court has instructed Plaintiff to provide additional details the second amended complaint may be no longer than 35 pages.

### III

For the foregoing reasons, the Court hereby orders as follows:

1. Plaintiff's Amended Complaint is DISMISSED WITH LEAVE TO FILE A SECOND AMENDED COMPLAINT containing all related claims against all Defendants that Plaintiff wishes to proceed against in this action. The pleading must be simple, concise and direct and must state clearly and succinctly how each and every Defendant is alleged to have violated Plaintiff's federally-protected rights. See Leer, 844 F.2d at 634. THE SECOND AMENDED COMPLAINT MAY BE NO MORE THAN 35 PAGES. The pleading must include the caption and civil case number used in this order and the words COURT ORDERED SECOND AMENDED COMPLAINT on the first page. Plaintiff is advised that he must file all of his claims in one complaint and not present them piecemeal to the Court in various letters and other documents. Failure to file a proper First Amended Complaint within twenty-eight days of this order will result in the dismissal of this action without prejudice.


2. Plaintiff is advised that the Second Amended Complaint will supersede the Amended Complaint and all other pleadings. Claims and defendants not included in the Second Amended Complaint will not be considered by the Court. See Lacey v. Maricopa County, 693 F.3d 896 (9th Cir. 2012) (en banc) ("For claims dismissed with prejudice and without leave to amend, we will not require that they be repleaded in a subsequent amended

1 complaint to preserve them for appeal. But for any claims  
2 voluntarily dismissed, we will consider those claims to be waived  
3 if not repled.").

4 3. It is Plaintiff's responsibility to prosecute this  
5 action. Plaintiff must keep the Court informed of any change of  
6 address by filing a separate paper with the Clerk headed "Notice  
7 of Change of Address," and must comply with the Court's orders in  
8 a timely fashion. Failure to do so may result in the dismissal  
9 of this action for failure to prosecute pursuant to Federal Rule  
10 of Civil Procedure 41(b).

11 IT IS SO ORDERED.

12 Dated: 06/25/2015

13   
14 THELTON E. HENDERSON  
15 United States District Judge

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